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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,833	12/29/2000	Don Eden Hale	10010039-1	9194

7590 06/28/2005
AGILENT TECHNOLOGIES
Legal Department, 51U-PD
Intellectual Property Administration
P.O. Box 58043
Santa Clara, CA 95052-8043

EXAMINER

NGUYEN, TAN D

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/750,833

Applicant(s)

HALE ET AL.

Examiner

Tan Dean D. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-12 and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/14/2005 has been entered.

Terminal Disclaimer

The Terminal Disclaimer filed 4/14/2005 is improper because: (1) the attorney who signed the Terminal Disclaimer, Daniel Santos, is not of record.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. **Claims 1-10, 11-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10, 11-20 of copending Application No. 10/117,471.** Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 1 and 7 (or 11 and 17) of this application reads over claim 1 (or 11) of copending Application No. 10/117,471. As for the limitation of "facilitating the financial transaction", it's inherently included when combining claims 1 and 7 (or 11 and 17) or would have been obvious in view of the general teaching of virtual integration of the business model.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

4. Claims 1-2, 4-10, 11-12, 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 and 11 are vague and indefinite because the pre-amble calls for "a computer-implemented method" and the 1st 3 steps (out of 5 steps) of the claim including the phrase "a computer-implemented" in the beginning of the claims, however, the last two remaining steps do not have the phrase "computer-implemented" and therefore, it's not clear how the claimed invention can be carried out with some steps using computer and other some other steps (2) can be carried out without using the computer or manually?

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 11, 12, 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by VAN HOEK or HAMMER.**

As for independent claim 11 which deals with a product (model) transact business for a product, this model reads over the virtual business model of VAN HOEK see page 1, lines 23-40 or HAMMER, page 1, lines 1-10. As for the different elements listed in claim 11, (a) a computer-implemented virtual manufacturer alliances, (b) a computer-implemented virtual distributor alliances, (c) a plurality of a computer-implemented virtual flows, (d) a contracting business, these carry no patentable weight because they are not physical features but merely nonfunctional descriptive material (data/information) and thus carry no patentable weight. If the model is a computer program then the claim language must be modified to include connection to a processor with a plurality of processor-executable instructions recorded on signal-bearing media, wherein the instructions, when executed by the processor of an a computer system would cause the computer system to performs the following steps.

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Dependent claims 12, 14-20 (part of 11), which merely further limit the nonfunctional descriptive material (information/idea/data) of claim 11 above, carry no patentable weight for the same reason set forth above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1-2, 4-10 (method), 11-12, 14-20 (product/model) are rejected under 35 U.S.C. 103(a) as obvious over (1) VAN HOEK (Article "Logistics and virtual.... Information", 1998) alone or further in view of (2) HAMMER (Article "The rise ...the rest", March 2000).**

As for independent method claim 1, VAN HOEK discloses a computed-implemented method of using a business model of virtual integration to transact business process for a product in a virtually integrated supply chain management (or SCM) throughout the entire chain {see page 1, lines 46-48 "*in purchasing, manufacturing, and shipping* (distributing)} comprising the steps of:

a) providing a computer-implemented well known 1st virtual business function (manufacturing) alliance (or partnering) (see page 2, lines 38-39 for "*outsourcing, partnering and co-operation among various players*"),

b) providing a computer-implemented well known 2nd virtual business function (distributing) alliance (“(1) outsourcing, (2) partnering and (3) co-operation among various players”), and every virtual distributor alliance (partnering) member being configured to perform operations associated with distribution of the manufactured product {see page 8, lines 7-10, “*five interregional distribution centers ... will supply the dealer with the requested car within as order-to-delivery*”};

c) providing a plurality of computer-implemented virtual flows for enabling electronic communication between the virtual alliances (partners) for use in the 1st function (manufacture) and 2nd function (distribution) of the product, the virtual flows having access to the virtual alliances (partnering) at each stage of the manufacture and distribution of the product, the virtual flows managing a flow of information along the virtual flows between alliance members {see page 1, abstract “extensive involvement of suppliers and distributors, and the integration of the flow of information”, page 2, lines 1-7, 41, 52-53, page 6, line 20, page 9, lines 1-5};

d) providing a contracting business for coordinating operations of virtual alliances (partnering and cooperating players) {see page 1, line 49 “outsourcing and sub-contracting” and lines 38-39 “outsourcing, partnering and co-operation among various players”; and

e) using the contracting business to establish, via the virtual flows, control over well known 1st and 2nd business functions (manufacturing and distribution of product) by the plurality of virtual alliances (partnering and cooperating players) { page 2, lines 1-5 “*company achieves control ... by mastering the flow of information*”, page 8, lines 32-35

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"maintains control over the supply chain by controlling and integrating the flow of information").

VAN HOEK fairly teaches the claimed invention except for further specific limitation in step (a) of 1st function (manufacturing) alliance comprising a plurality of manufacturer alliance members, every member of the alliance being configured to perform operations associated with the 1st function (manufacturing) of the product. However, on page 7, lines 30-32, discloses the integration of *"by a number of 1st tier suppliers of which seven are fully integrated into the final assembly plant"*, lines 52-54, *"close participation of the suppliers in the final assembly of the car, but the suppliers are also strongly involved in the development, planning and launching of the product"*, therefore, it would have been obvious to modify a portion of the teaching of VAN HOEK as disclosed in steps (a) - (e) above by including a 1st function (manufacturing) alliance comprising a plurality of manufacturer alliance members (suppliers), every member (supplier) of the alliance being configured to perform operations associated with the 1st function (manufacturing) of the product as taught in another portion shown on page 7 indicated above.

Alternatively, in another similar virtual business integration model involving "SCM", HAMMER discloses the carrying out of step (a) above (some of the suppliers are responsible for manufacturing along with the manufacturer.... Members of the virtual enterprise are tightly woven together) for the benefit of concentrating on processes at which you can be world-class or focus on their core competencies and rely on someone else (outsourcers) to perform the rest in a fast-moving technology, increase competition

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and the rise of the Internet {see page 2, lines 1-12, page 1, lines 1-10, 30-33, 40-43}.

HAMMER discloses that this is one the most important Internet application for company to survive and be the best {see page 1, lines 1-5, lines 29-40}. It would have been obvious to modify the teachings of VAN HOEK by modifying step (a) as taught by HAMMER for the benefit cited above. Note that steps (d) and (e) are also taught in HAMMER page 1, lines 7-10 and 35-37.

As for dep. claim 2 (part of 1), which deals with other well known business functions parameters, i.e. material and material alliance (beside manufacturing and distributing as in claim 1), this is non-essential limitation to the scope of the claimed invention and is fairly taught in VAN HOEK page 7, lines 30-55 "suppliers of materials/products/parts" or HAMMER page 2, lines 1-5 "vehicle and parts suppliers". The connection of another alliance, material alliance is inherently included or would have been obvious in view of the teachings of VAN HOEK on page 1, lines 46-47, "in purchasing, manufacturing and shipment".

As for dep. claim 4 (part of 1), which deals with other well known business functions parameters, i.e. connection of distributor with warehouse or storage/storing area, this is non-essential limitation to the scope of the claimed invention and is fairly taught in VAN HOEK page 2, line 58 "storing finished goods", page 8, lines 10-15 "*store the appropriate components*".

As for dep. claims 5-7 (part of 1), which deals with other well known business information flow parameters, i.e. product, financial, etc., these are non-essential limitation to the scope of the claimed invention and are fairly taught in VAN HOEK page

1, lines 35-40, page 2, lines 1-7. Alternatively, the inclusion of other well known information of business parameter such as material/product, information, marketing and finance, etc., would have been obvious as mere monitoring other well known critical information in the virtually integrated supply chain of VAN HOEK.

As for dep. claim 8 (part of 1), which deals with other well known business information flow parameters, i.e. contracting related information, this is non-essential limitation to the scope of the claimed invention and shown in page 2, lines 5-7, 40-44, page 8, lines 20-40.

As for dep. claim 9 (part of 1), the limitation of virtual regional hubs or distribution centers located regionally is taught on page 8, lines 5-10, or page 1, lines 30-40, wherein it's well known that computer parts for Dell are made throughout the world such as Taiwan, China, Malaysia, Mexico, etc., and the parts are assembled and sold in the United States and therefore, virtual regional hubs are created outside the United States to communicate effectively. Moreover, it's well known to an artisan that the degree/effectiveness of coordination/control varies with the number of alliances, the type of organization, geographical locations of each alliance (supplier or manufacturer), operating time of each alliance, etc., therefore, the adjusting of the control degree or effectiveness is considered as optimizing operating conditions or result effective variables and the optimizing of result effective variables is considered as routine experimentation to determine optimum or economically feasible reaction conditions and would have been obvious to the skilled artisan. In re Aller, 105 USPQ 233. For example, if the alliances is scattered throughout the globe, i.e. China, Philippine,

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Europe, Africa, U.S., it would have been obvious to form regional hub to effectively coordinate the communication between the alliances due to the large distance between each alliance.

As for dep. claim 10 (part of 1), which deals with well known business parameters to facilitate responsiveness in upstream integration with suppliers and downstream integration with suppliers and customers, i.e. automatically triggering financial transaction upon integrating of financial flows and information flows, or in other word, triggering an invoice or collection upon completing shipping an order to a customer, this automatic triggering concept is fairly taught in VAN HOEK page 6, lines 15-24 for ordering products at point of sale or HAMMER page 2, lines 20-23.

Alternatively, the application of virtual information flows monitoring and management to other well known business transaction parameters, such as finance, payment, billing, credit/collection, etc., would have been obvious to a skilled artisan as mere applying the same modeling process to other well known or similar business parameters to complete a business transaction for a product in view of the teaching of monitoring all information related to the manufacturing and selling of product as taught by VAN HOEK above.

As for independent model claim 11, which is a computer-implemented virtual business model to transact business for a product of claim 1 above, it's also rejected (2nd time) for the same reason set forth in claim 1 above with respect to the model limitation.

As for dep. claims 12, 14-20 (part of 11), which have the same limitations as in dep. claims 2, 4-10 above, they are rejected (2nd time) for the same reasons set forth in dep. claims 2, 4-10 above.

9. Dependent claims 7, 10 are rejected (2nd time) under 35 U.S.C. 103(a) as being unpatentable over VAN HOEK alone or VAN HOEK /HAMMER as applied to claims 1-2, 4-10 above, and further in view of LEWIS et al (Article 1997).

The teachings of VAN HOEK or VAN HOEK /HAMMER are cited above. As for dep. claims 7, 10, in a similar business environment for virtual business enterprise due to outsourcing and sub-contracting and the calling for a "value-added partnerships (or strategic alliances)", LEWIS et al is cited to control of information flows in a virtual flow train or rail wherein the information includes other well known business information such as financial flow (purchase order, waybills, and payments) to complete the management of a business transaction of a product or service (see pages 2, 3, 4, especially lines 15-20, page 5, lines 36-40,). It would have been obvious to modify the process of VAN HOEK alone or VAN HOEK / HAMMER to include other well known financial information as taught by LEWIS et al to complete the management of a business transaction of a product/service and/or completion of the Supply Chain Management or Logistics Processes Management. Moreover, it would have been obvious to modify the process of VAN HOEK alone or VAN HOEK /HAMMER to clearly and definitively provide a plurality of virtual alliances for the manufacturing and distribution in view of the teaching of a "value-added partnerships (or strategic alliances)" as mentioned by LEWIS et al above.

Response to Arguments

10. Applicant's arguments (1) filed 04/14/2005 have been fully considered but they are not persuasive.

(1) Applicant's comment that the SCM disclosed in Van Hoek teaches a single manufacturer and a single distributor is acknowledged, but this comment is not found persuasive because this is merely one (page 1) of the many teachings in VAN HOEK (pages 7, 8, 9). Note on pages 7-8 disclose the integration of many suppliers in the loop "integrated suppliers" to be involved in the development, planning and launching (manufacturing) of the product. On page 8, 1st paragraph, discloses the joining of 5 distribution centers to supply the product to the dealer. Page 9, 1st paragraph, discloses seamless integration, cross-functional, cross-company integration to form a seamless integration of manufacturing.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail CustomerService3600@uspto.gov.

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor John Weiss may be reached at (571) 272-6812. The FAX phone numbers for formal communications concerning this application are (703) 872-9306. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

dtn
June 22, 2005


DEAN T. NGUYEN
PRIMARY EXAMINER